IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.457 OF 2006
IN
SUIT NO.1031 OF 2004

Shashikala S. Keni ....Plaintiff
V/s.
Kamlakar K. Patil & Ors. ....Defendants

Mr.H.S.S. Murthy for the Plaintiff.
Mr.A.G. Damle for Defendant Nos.1, 2 and 4.
Ms.Y.E. Tavaria i/b D.A. Barot for Defendant No.3.
Ms.U.K. Shah i/b K.D. Shah for Defedant No.5.

CORAM : S.J. VAZIFDAR, J.
DATED : 13TH SEPTEMBER, 2006.

P.C. :

1. By this Notice of Motion the Plaintiff seeks an order of attachment before judgment. By an order dated 21.7.2005, Defendant Nos.1 to 4 were directed to deposit a sum of Rs.20,00,000/- within three months. The amount was admittedly not deposited. In view thereof by an ad-interim order dated 24.2.2006 the Defendants were restrained from alienating, encumbering or creating third party rights or parting with the possession of the property at CTS Nos.6-A, 6-B and Survey No.104 and 23-A at village Tungarle, Lonawala. The amount has not been deposited to date. Ms.Tavaria, the learned counsel appearing on behalf of Defendant No.3 contends that the other Defendants

ought to deposit the said amount as they received the amount from the developer i.e. Defendant Nos.6 to 8. She however, contends that certain facts were not correctly represented before D.K. Deshmukh, J. who passed the order on 21.7.2005 and therefore, the said order came to be passed. No application for review of the order has been made. The order stands. The said order is binding on the parties.

2. Mr.Damle, the learned counsel appearing on behalf of Defendant Nos.1, 2 and 4 states that each of Defendant Nos.1, 2 and 4 shall deposit a sum of Rs.5,00,000/- with interest as provided in the order dated 21.7.2005. That is the matter between Defendant Nos.1 to 4 inter-se. Till the order dated 21.7.2005 is complied with, ad-interim order dated 24.2.2006 must be confirmed.

3. Mr.Murthy, the learned counsel appearing on behalf of the Plaintiff states that the Plaintiff has now learnt that an amount in excess of Rs.1.00 crore was in fact received by Defendant Nos.1 to 4. He states that the order dated 21.7.2005 was passed on the basis that the Defendants had received only Rs.1.00 crore. The Plaintiff is at liberty to adopt proceedings in view of the alleged new factors.

4. In the circumstances, ad-interim order dated 24.2.2006 is confirmed as order on the Notice of Motion.

5. Liberty to Defendant No.3 to apply for modification of the order after compliance of the order dated 21.7.2005.

6. The Notice of Motion is accordingly disposed of.